UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LOUIS P. CANNON, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 12-CV-133 (ESH)
DISTRICT OF COLUMBIA	)	
Defendant.	)	

DEFENDANT THE DISTRICT OF COLUMBIA'S
MOTION TO DISMISS

Pursuant to FED. R. CIV. P. 12(b)(6), defendant the District of Columbia ("the District") hereby moves this Court to Dismiss the Second Amended Complaint ("SAC") based on plaintiffs' failure to state a cause of action for which relief can be granted.

As grounds for its motion, the District states:

- Aside from the impending resolution of three plaintiffs' damages under the FLSA, plaintiffs are precluded from proceeding under the law of the case or have failed to state a cause of action under federal law and, thus, pendent jurisdiction is not appropriate here.
- Plaintiffs' assertions that the offsets applied here are the equivalent of a forbidden "non-resident tax" remain specious.
- Plaintiffs' common law claims are preempted by the CMPA or otherwise fail on the merits.

For these reasons, plaintiffs' claims against the District cannot survive and the SAC should be dismissed in its entirety. A Memorandum of Points and Authorities in support hereof and a proposed order is attached hereto.

Dated: October 18, 2013

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF DEFENDANT
THE DISTRICT OF COLUMBIA'S MOTION TO DISMISS

Defendant the District of Columbia ("the District") hereby respectfully submits this memorandum in support of its motion to dismiss. Attached also is a proposed order.

The Court should dismiss the SAC because this Court lacks subject matter jurisdiction and because plaintiffs have failed to state a claim upon which relief may be granted.

INTRODUCTION AND BACKGROUND

Plaintiffs are District employees who retired from service with the Metropolitan Police Department ("MPD") and began receiving retirement benefits, but who were subsequently re-hired. *See* SAC ¶ 1; First Amended Complaint ("FAC") at ¶ 1; Doc. No. 6-1, ¶ 5. *See also Cannon v. District of Columbia*, 717 F.3d 200, 202 (D.C. Cir. 2013).

On October 12, 2011, the plaintiffs were notified, in writing, that because they were being paid retirement benefits from the D.C. Police and Fire Retirement System ("PFRS"), D.C. OFFICIAL CODE § 5-723(e) mandated that the amounts of their salaries must be "offset" by the amounts of their respective annuity benefits. *See Cannon*, 717 F.3d at 203. The District applied

the offset to plaintiffs' salaries beginning with the first pay period of 2012. SAC ¶ 50 (plaintiffs "learned" of the offsets "[o]n or about January 25, 2012"); *Cannon*, 717 F.3d at 203.

Plaintiffs filed their original complaint, and motions for a temporary restraining order and preliminary injunction, on or about January 26, 2012, alleging various federal, local, and constitutional causes of action. *Cannon*, 717 F.3d at 203. On February 8, 2012, plaintiff Cannon was terminated from District employment. *Id*.; SAC ¶ 57.

Plaintiffs' motions for emergency injunctive relief were denied, and, on July 6, 2012, this Court issued a decision granting the District's dispositive motion regarding plaintiffs' federal claims, and remanding the local-law and common law claims to the D.C. Superior Court. *See Cannon v. District of Columbia*, 873 F.Supp.2d 272 (D.D.C. 2012).

After appeal, the D.C. Circuit affirmed in part and reversed in part, finding that the District, in applying the mandated offset, had violated the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq*., by reducing the salaries of plaintiffs Ford-Haynes, Neill, and Weeks to below "the $455 weekly compensation necessary to qualify for the exemption as 'bona fide executive, administrative, or professional' employees." *Cannon*, 717 F.3d at 206 (quoting 29 U.S.C. § 213(a)(1)).[1] *See also* 29 C.F.R. § 541.600(a) (such exempted employees must be "compensated on a salary basis at a rate of not less than $455 per week").

The Circuit agreed with this Court that plaintiffs' constitutional claims were "meritless." *Cannon*, 717 F.3d at 206. The Circuit found that the takings and due process claims failed, because plaintiffs did not have an entitlement to both their full salaries and their annuities. *Id*. at 207. The Circuit also affirmed the dismissal of plaintiffs' equal protection claims, based on the

[1] *See also id*. at n.1 ("The plaintiffs do not dispute that their duties fit the exemption."); *id*. at 206 ("Had the District invoked § 5-723(e) to reduce the plaintiffs' salaries to $455 per week, it would be in compliance with the FLSA.").

District's giving raises to certain "senior MPD officers" and not plaintiffs. *Id*. Finally, the Circuit affirmed the grant of summary judgment on plaintiffs' First Amendment retaliation claims. *Id*. at 208. The Circuit held that the Court did not abuse its discretion in holding that "the plaintiffs could not establish that the lawsuit 'was a substantial or motivating factor' in Cannon's firing." *Id*. (quoting *Wilburn v. Robinson*, 480 F.3d 1140, 1149 (D.C. Cir. 2007)).

The Circuit vacated the Court's dismissal of "the D.C. law claims" *id*. at 209, and remanded for the Court to "calculate any back pay and damages to which these plaintiffs may be entitled under 29 U.S.C. § 216." *Id*. at 206.

On September 24, 2013, the plaintiffs filed the 30-page, 181 paragraph, 15-count SAC (Count I: Deprivation of a Property Interest; Count II: Violation of the FLSA; Count III: Deprivation of Equal Protection; Count IV: Violation of [the Home Rule Act]; Count V: Violation of the Public Tax Act; Count VI Breach of Contract; Count VII: Unjust Enrichment; Count VIII: Detrimental Reliance/Promissory Estoppel; Count IX: Intentional or Negligent Misrepresentation; Count X: Deprivation of First Amendment Rights I (Cannon termination); Count XI: Deprivation of First Amendment Rights II (withholding pay); Count XII: Defamation; Count XIII: Violation of the D.C. Whistleblower Protection Act ("DCWPA") I (Cannon termination); Count XIV: Violation of the D.C. Whistleblower Protection Act II (withholding pay); and Count XV: Constructive Termination).

Only plaintiff Weeks remains employed with the District. *See* SAC ¶ 63.

ARGUMENT

Notwithstanding plaintiffs' success on the FLSA claims for three plaintiffs, the same results should obtain now as earlier—dismissal of all claims. This Court, as before, lacks subject

matter jurisdiction, and should therefore not exercise jurisdiction over the D.C. claims. Because plaintiffs, in the SAC, did little more than cut-and-paste their previous claims, the District will endeavor to streamline its previous dispositive arguments with minimal repetition, although they remain fully applicable here except for those regarding the FLSA.[2]

Not only have plaintiffs failed to state a claim, they are precluded from success by the law-of-the-case doctrine.

Under the Federal Rules of Civil Procedure, the complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This pleading standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555). "Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557) (alteration marks omitted).

To survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). This facial plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556). "Where a complaint pleads facts that are merely consistent with a

[2] To the extent specific arguments from the District's earlier dispositive briefing are not repeated, they are incorporated herein by reference, as noted.

defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted).

Although the allegations in the complaint must be taken as true, the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555 (internal quotation marks omitted); *see also Iqbal*, 556 U.S. at 678 ("the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions"). Most of the SAC may be so categorized.

By any standard, and as set forth below, plaintiffs' claims against the District cannot stand. As such, the District is entitled to dismissal with prejudice.

I. Federal Law Claims

A. Law-Of-The-Case Precludes Plaintiffs From Proceeding on Counts I (Due Process), Count III (Equal Protection), Count X & XI (First Amendment), and Counts XIII & XIV (D.C. Whistleblowers' Protection Act).

The law-of-the-case doctrine developed to ensure that "the *same* issue presented a second time in the *same case* in the *same court* should lead to the *same result*." *Sherley v. Sebelius*, 689 F.3d 776, 780–81 (D.C. Cir. 2012) (emphasis in original) (quoting *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996)). As discussed below, application of the doctrine here results in the dismissal of Counts I, III, X, XI, XIII, and XIV.

Thus, because this Court has previously resolved most of the identical issues plaintiffs present now, plaintiffs are bound by those rulings. Moreover, the Circuit explicitly affirmed most of the earlier rulings.

> Under the law-of-the-case doctrine, "a court involved in later phases of a lawsuit should not re-open questions decided . . . by that court or a higher one in earlier phases." *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995). When a district court hears a case on which the court of appeals has previously

> ruled, "an even more powerful version of the doctrine," which is "sometimes called the 'mandate rule,' " applies. *Barry*, 87 F.3d at 1393 n. 3. That strong form of the law-of-the-case doctrine "requires a lower court to honor the decisions of a superior court in the same judicial system," *id*., because "[t]he decision of a federal appellate court establishes the law binding further litigation by another body subject to its authority," *City of Cleveland v. Fed. Power Comm'n*, 561 F.2d 344, 346 (D.C. Cir. 1977).

Larsen v. U.S. Navy, 887 F.Supp.2d 247, 251 (D.D.C. 2012).

Consequently, aside from the FLSA claim, plaintiffs are bound by the earlier rulings on the constitutional claims and this Court's dismissal of their D.C. law claims. Paragraphs 52 and 53 of the FAC and paragraphs 66 and 67 of the SAC are—literally—identical, word for word, hence plaintiffs are precluded from proceeding on Count I of the SAC, alleging a deprivation of a property interest "absent any due process or compensation[.]" SAC ¶ 66. The Circuit held that "plaintiffs have no entitlement to *both* full salary *and* their annuities" *Cannon*, 717 F.3d at 207, hence their due process and takings claims fail. *Id*. (citing *Hettinga v. United States*, 677 F.3d 471, 479–80 (D.C. Cir. 2012) (*per curiam*)). Thus, Counts I and III should be dismissed.

Similarly, plaintiffs are precluded from proceeding on Count III of the SAC, alleging the deprivation of equal protection, as the Circuit affirmed this Court's dismissal of that claim. *See Cannon*, 717 F.3d at 207. *Cf.* FAC ¶¶ 63–78 and SAC ¶¶ 77–92.

Additionally, plaintiffs' claims regarding alleged retaliation in deprivation of First Amendment rights are identical to those made earlier, *cf.* First Supplemental Complaint ("FSC") ¶¶ 13–24 and SAC ¶¶ 127–138. The Circuit affirmed this Court's holdings on those same claims, *Cannon*, 717 F.3d at 208, hence plaintiffs are bound by the law of the case. The Circuit agreed with this Court that plaintiffs' First Amendment retaliation claims failed, in part because this Court properly held that "the plaintiffs could not establish that the lawsuit 'was a substantial or motivating factor' in Cannon's firing." *Cannon*, 717 F.3d at 208 (quoting *Cannon*, 873 F.Supp.2d

at 285 (in turn quoting *Wilburn*, 480 F.3d at 1149)). *See Cannon*, 873 F.Supp.2d at 285 ("The evidence makes clear that the disciplinary action that resulted in [Cannon's] firing was undertaken months before the lawsuit was filed or even contemplated, and the recommendation that he be fired, dated January 17, 2012, was also made well before there was any reason for litigation.") (citations omitted).[3] Counts X and XI should therefore be dismissed.

B. Plaintiffs' Claims Are Precluded By The D.C. Comprehensive Merit Personnel Act.

Plaintiffs' claims—including their putative constitutional claims—are pre-empted by the Comprehensive Merit Personnel Act, D.C. Official Code §§ 1-601.01 *et seq.* (2012 Supp.).[4] As this Court recognized in *Bowers v. District of Columbia*, the CMPA:

> was enacted to provide employees of the District of Columbia an impartial and comprehensive administrative scheme for resolving employee grievances.' Further, '[t]he District of Columbia Court of Appeals consistently has held that, with only one exception [sexual-harassment claims] the CMPA is the *exclusive avenue* for aggrieved employees of the District of Columbia to pursue work-related complaints.

883 F.Supp.2d 1, 7 (D.D.C. 2011) (emphasis added) (quoting *Holman v. Williams*, 436 F.Supp.2d 68, 74 (D.D.C. 2006)) (additional citations omitted). *See also Saint-Jean v. District of Columbia*, 846 F.Supp.2d 247, 264 (D.D.C. 2012) (same); *Owens*, 923 F.Supp.2d at 248 ("The

[3] Similarly, as discussed elsewhere herein, if the lawsuit was not a "substantial or motivating factor" in Cannon's termination, then, logically, the "withholding of the pay," SAC ¶ 164, could not have been in retaliation for the "protected disclosures" contained in the lawsuit, *id*. ¶ 165, because the withholding began *before* the suit was filed, as plaintiffs themselves allege. *Cf. id*., ¶¶ 50–51.

[4] Plaintiffs claim that the CMPA is "inapplicable" to them. SAC ¶ 27. This is incorrect. *See Owens v. District of Columbia*, 923 F.Supp.2d 241, 248 (D.D.C. 2013) ("The CMPA applies to all District of Columbia employees unless specifically exempted.") (citing D.C. Official Code § 1-602.01 (2012) and *Crockett v. MPD*, 293 F.Supp.2d 63 (D.D.C. 2003)).

CMPA serves as the exclusive remedy for employment-based conflicts in the District of Columbia.").

"Additionally, constitutional claims, despite their federal nature, fall within the CMPA jurisdiction when they are essentially state law claims that the plaintiffs construed in a constitutional light so as to seek federal court jurisdiction." *Id*. (citing *Washington v. District of Columbia*, 538 F.Supp.2d 269, 280 n.5 (D.D.C. 2008)). Notwithstanding that the constitutional claims are precluded here, this description perfectly fits those claims. *See id.* ("[p]laintiffs therefore cannot use a constitutional hook to reel their CMPA-precluded claims into this Court.") (quoting *McManus v. District of Columbia*, 530 F.Supp.2d 46, 70 (D.D.C. 2007)).

The Court need do little more than follow the logic of *Holman*, *Bowers*, and *Owens* to dismiss this matter. "Preemption by the CMPA divests the trial court—whether it be the Superior Court *or this Court*—of subject matter jurisdiction." *Eric Payne v. District of Columbia*, 773 F.Supp.2d 89, 101 (D.D.C. 2011) (emphasis added) (quoting *Holman*, 436 F.Supp.2d at 74). *See Bowers, supra* (breach-of-contract claim preempted by CMPA); *Owens*, 923 F.Supp.2d at 251–52 (dismissing defamation claim for failure to exhaust under CMPA); *Saint-Jean*, 846 F.Supp.2d at 265 (defamation claim preempted by CMPA).

C. Plaintiffs Fail To State A Claim Under The Public Tax Act, Count V.

In a desperate attempt to maintain federal-court jurisdiction, plaintiffs purport to bring claims under the Public Tax Act, 4 U.S.C. § 111. The fact that there are no reported decisions even citing this Act from any local court, this Court, or the D.C. Circuit should give some indication of just how far afield plaintiffs are here.

The Act is the United States' waiver of sovereign immunity to allow the taxation of the pay of "an officer or employee of the United States, a territory or possession or political

subdivision thereof, [or] the government of the District of Columbia . . . if the taxation does not discriminate . . . because of the source of pay or compensation." *Id*. *See, e.g., Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 813 (1989) ("On its face, § 111 purports to be nothing more than a partial congressional consent to nondiscriminatory state taxation of federal employees.").[5]

The law was originally enacted in 1939, 53 Stat. 575, ch. 59, § 4 (Apr. 12, 1939), at a time when District-government employees were federal employees, and never updated to reflect Home Rule. Notwithstanding this, for the reasons discussed herein, the pension offset is not a "tax," and, in any event, plaintiffs' claim otherwise fails. The Circuit held "that the District may not count the plaintiffs' annuities as compensation[,]" *Cannon*, 717 F.3d at 205, thus, the only "compensation" received by plaintiffs is that paid by the District for services rendered (not the annuities), hence the District is not discriminating on the source of that compensation. Moreover, even if the Circuit had ruled that the District *could* count plaintiffs' annuities as compensation, plaintiffs' Public Tax Act claim would *still* fail, because plaintiffs "do not receive pension benefits under 5 U.S.C. § 8331," *id*. at 206, but rather under the District's Police Officers' and Firefighters' Retirement Plan, *see id.* at 202, hence the "source" of the annuities is local, and thus the District is not "discriminating" because of the source of the compensation.

For these reasons, Count V must be dismissed.

[5] The Supreme Court in *Davis* struck down a Michigan law which exempted from taxation all retirement benefits paid by the State (or its political subdivisions), but imposed an income tax on all other retirement benefits, including those paid by the federal government. *Id*. at 817.

D. Fair Labor Standards Act, Count II

The Circuit has ruled that the District, in applying the mandated offset, violated the FLSA, 29 U.S.C. § 201 *et seq*., by reducing the salaries of plaintiffs Ford-Haynes, Neill, and Weeks to below "the $455 weekly compensation necessary to qualify for the exemption as 'bona fide executive, administrative, or professional' employees." *Cannon*, 717 F.3d at 206 (quoting 29 U.S.C. § 213(a)(1)). The Circuit remanded for a calculation of "any back pay and damages to which these plaintiffs may be entitled under 29 U.S.C. § 216." *Cannon*, 717 F.3d at 206. The District's calculation of back pay is filed contemporaneously herewith.

Plaintiffs have not asserted FLSA claims on behalf of the remaining plaintiffs, thus, once the Court approves such an award, it should not retain jurisdiction over any remaining District-law claims.

E. This Court Should Not Exercise Jurisdiction Over The Majority Of Plaintiffs' Claims, Including Counts IV, VI–IX, and XII–XV.

As this Court determined previously, aside from the FLSA claims, this Court should not exercise jurisdiction to hear plaintiffs' claims, as plaintiffs' constitutional claims remain utterly meritless, and plaintiffs have failed to state a claim under the federal Public Tax Act.

Plaintiffs assert that the Court has subject matter jurisdiction over its claims pursuant to D.C. OFFICIAL CODE § 1-815.02(a), SAC ¶ 7, which confers exclusive jurisdiction in this Court over claims brought by participants in PFRS and the D.C. Teachers Retirement Fund. D.C. OFFICIAL CODE §§ 1-801.02(5), 1-815.01(a)(1), and 1-815.02(a). Specifically, this statute confers jurisdiction over claims by participants or beneficiaries of this fund "to enforce or clarify rights to benefits from the Trust Fund." D.C. OFFICIAL CODE § 1-815.02(a).

But, as before, plaintiffs do not allege that the District's actions affected their *retirement* benefits, only that the District has subjected them to "a reduction in pay[.]" SAC ¶ 24. Because plaintiffs do not seek to enforce or clarify their rights regarding their *pensions*, the Court lacks jurisdiction over plaintiffs' claims pursuant to D.C. OFFICIAL CODE § 1-815.02(a), a conclusion the D.C. Circuit strongly implied. *See Cannon*, 717 F.3d at 206 (Section 5-723(e) "directs the District to reduce the *salaries* of double-dipping employees, while leaving annuity payments unaffected.") (emphasis in original).

Plaintiffs again argue that the Court has jurisdiction over their claims pursuant to*inter alia*, 28 U.S.C. § 1367, which permits the Court to exercise supplemental jurisdiction over state or common law claims; and 28 U.S.C. § 2201, the Declaratory Judgment Act. SAC, ¶¶ 13, 15, 20. As discussed herein, however, with the exception of the pending FLSA damages claim, plaintiffs have not stated a federal cause of action alleging a violation of any right under the Constitution or federal statute.[6] Without a federal claim, plaintiffs lack a claim that confers subject matter jurisdiction on the Court and, as a result, the Court should not exercise supplemental jurisdiction over plaintiffs' state or common law claims. *Loughlin*, 393 F.3d at 170.

Likewise, the Declaratory Judgment Act "creates a remedy in cases otherwise within the Court's jurisdiction, but does not constitute an independent basis for jurisdiction." *Neighbors of Casino San Pablo v. Salazar*, 773 F.Supp.2d 141, 149 (D.D.C. 2011) (internal quotations omitted).

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[6] The Court's impending award of FLSA damages will fully compensate plaintiffs for their injuries, and provide yet another basis on which to dismiss any remaining claims. *See, e.g., Woodward & Lothrop v. Hillary*, 598 A.2d 1142, 1146–47 (D.C. 1991) ("[W]hile a plaintiff may seek damages for his injuries on a variety of legal theories, 'a cardinal principle of law is that . . . a plaintiff can recover no more than the loss actually suffered.'") (quoting *Kassman v. American Univ.*, 546 F.2d 1029, 1033 (D.C. Cir. 1976) (*per curiam*)). *See also Medina v. District of Columbia*, 643 F.3d 323, 326 (D.C. Cir. 2011) (discussing doctrine of double recovery; "The animating principle is simple: when a plaintiff seeks compensation for wrongs committed against him, he should be made whole for his injuries, not enriched.") (citing *Kassman*)).

The Declaratory Judgment Act thus does not allow the Court to exercise jurisdiction over plaintiffs' state law or common law causes of action in the absence of any surviving federal claims.

Finally, even if plaintiffs *had* been able to state a claim under local statutory or common law, because plaintiffs fail to state a federal claim, it would be inappropriate for this Court to retain jurisdiction over those local claims. *See, e.g.*, *Robinson v. District of Columbia*, ___ F.Supp.2d ___, 2013 WL 4647332, *6 (D.D.C. Aug. 30, 2013) ("Whether to retain jurisdiction over pendent . . . claims after dismissal of the federal claims is a matter left to the sound discretion of the district court[.]") (quoting *Ali Shafi v. Palestinian Auth.*, 642 F.3d 1088, 1097 (D.C. Cir. 2011)); *Harris v. DCWASA*, 922 F.Supp.2d 30, 36 (D.D.C. 2013) ("[P]endent jurisdiction is a doctrine of discretion, not of plaintiff's right.") (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966)).

After examining the factors set forth in 28 U.S.C. § 1367(c), *see Shekoyan v. Sibley Int'l*, 409 F.3d 414, 424 n.4 (D.C. Cir. 2005), this Court should decline to exercise jurisdiction over the District-law claims:

> In addition to requiring application of District of Columbia tort law, the question of the sufficiency of the notice of claims letter and/or e-mail received by the District—which is relevant to the viability of all of Plaintiff's tort claims—would appear to require an especially nuanced application of District of Columbia case law interpreting the requirements of D.C. Code § 12–309. *See, e.g., Alraee v. Bd. of Trustees of Univ. of Dist. of Columbia*, 889 F.Supp.2d 73, 77 (D.D.C. 2012) (dismissing sole federal claim and declining to exercise supplemental jurisdiction over breach of contract and tort claims because they raised novel or complex issues of District of Columbia law).

Runnymede-Piper v. District of Columbia, ___ F.Supp.2d ___, 2013 WL 3337797, *7 (D.D.C. July 3, 2013). *See also id.* ("The Court has not yet invested significant time and resources on the state law claims, and the District of Columbia Superior Court would naturally have greater

familiarity and interest in the issues that remain insofar as they require interpretation of the District's own statutory and common law.").

II. Local Law Claims

A. Plaintiffs Failed to Comply With Mandatory Notice Requirements.

Even if the Court could exercise jurisdiction over plaintiffs' common law tort claims, they have failed to comply with the notice requirements of D.C. OFFICIAL CODE § 12-309. *See Candido v. District of Columbia,* 242 F.R.D. 151, 158 n.6 (D.D.C. 2007). As the District argued originally (in its Opposition to Plaintiffs' Motion for a Temporary Restraining order, at 12–13), a party may not maintain an action contrary to the terms of that provision. Compliance with this provision, requiring written notice that "disclose(s) both the factual cause of the injury and a reasonable basis for anticipating legal action as a consequence," is a *mandatory* condition precedent to filing a lawsuit against the District. *Kennedy v. District of Columbia,* 519 F.Supp.2d 50, 58 (D.D.C. 2007). *See also*, D.C. OFFICIAL CODE § 12-309.

Despite these dispositive arguments, plaintiffs continue to incorrectly claim that they have provided the statutorily-required notice, merely by serving their Complaint upon the District. SAC, ¶ 21. But "it is well-established that 'a complaint does not itself satisfy the notice requirements of Section 12–309.'" *Kennedy*, 519 F.Supp.2d at 58 (quoting *Powell v. District of Columbia*, 645 F.Supp. 66, 69 (D.D.C. 1986)). *See also Campbell v. District of Columbia*, 568 A.2d 1076, 1079 (D.C. 1990) ("We hold that neither the filing of the complaint nor the possible existence of a Fire Department report satisfied the notice requirement of § 12–309.") (footnoted omitted).

As plaintiffs have failed to provide the required written notice to the Mayor of the District of Columbia prior to filing this lawsuit for unliquidated damages, they cannot succeed on their common-law claims.

B. The CMPA Precludes Plaintiffs' Local Claims.

As discussed above, the CMPA precludes plaintiffs' tort claims, both federal and local. *See also, e.g., Robinson v. District of Columbia*, 748 A.2d 409, 411 (D.C. 2000) ("With few exceptions, the CMPA is the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind." (citing *Stockard v. Moss*, 706 A.2d 561, 564 (D.C. 1997)).[7]

Moreover, plaintiffs have failed to exhaust their administrative remedies under that statute. Under the CMPA, an employee may either appeal an adverse action to the OEA, or, if they belong to a union, use a grievance procedure set out in any applicable collective-bargaining agreement. *Johnson v. District of Columbia*, 552 F.2d 806, 810 (D.C. Cir. 2008) (citing D.C. Official Code § 1-616.52(e)). An employee contesting an adverse action "must exhaust the remedies prescribed either by the [CMPA]" or their CBA. *Id*. *See also Hunt v. District of Columbia*, 66 A.3d 987, 994 n.9 (D.C. 2013) (CMPA requires "that District employee claims of wrongful personnel action be adjudicated first by the [appropriate agency].") (citing *Cooper v. AFSCME, Local 1033*, 656 A.2d 1141, 1142 n.1 (D.C. 1995)).

Plaintiffs have failed to exhaust their administrative remedies. *See Audrick Payne v. District of Columbia*, 592 F.Supp.2d 29, 35 (D.D.C. 2008) ("Although the D.C. Circuit has

[7] "The only significant exception that this court has recognized thus far is for claims arising under the District of Columbia Human Rights Act (DCHRA)." *Lattisaw v. District of Columbia*, 905 A.2d 790, 794 n.6 (D.C. 2006) (citing *King v. Kidd*, 640 A.2d 656 (D.C. 1993)).

reserved judgment as to whether federal courts must treat the CMPA as jurisdictional, 'federalism and comity considerations' favor the application of exhaustion requirements regardless of how they are characterized.") (citing *Johnson*, 552 F.3d at 809) (additional citations omitted).

That plaintiffs now purport to bring "independent" constitutional claims does not change this analysis. *See id*. at n.8 ("The fact that [the due process] claim is couched in constitutional terms is of no moment for the exhaustion inquiry.") (alteration in original) (quoting *Johnson v. District of Columbia*, 368 F.Supp.2d 30, 42 (D.D.C. 2005)).[8]

Similarly, the fact that plaintiffs may seek relief that the local administrative agencies cannot award is unavailing. *See Audrick Payne*, 592 F.Supp.2d at 38 ("The unavailability under the CMPA of relief that may be awarded in constitutional or tort litigation is . . . essentially irrelevant. [A]n exclusive remedy does not lose its exclusivity upon a showing that an alternative remedy might be more generous.") (quoting *White v. District of Columbia*, 852 A.2d 922, 926 (D.C. 2004)). *See also id*. at 39 ("the D.C. Circuit has also held that available administrative

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[8] *See also Washington*, 538 F.Supp.2d at 277:

> Here, the plaintiffs' constitutional claims are intimately intertwined with their remedies under the CMPA for termination. Indeed, the court cannot even estimate the scope of any constitutional injury while administrative proceedings are pending. Such proceedings might (1) result in a decision harmonizing the defendant's actions with the law, which would set the stage for an appeal to local judicial institutions; or (2) result in a decision declaring the defendant's actions inconsistent with the law, which would vindicate the plaintiffs' claims and affect the contours and extent of their inchoate due process and defamation injuries. Were the court to decide the merits of the plaintiffs' constitutional claims now, it would prejudge local procedural questions pending before a local adjudicatory body. For these reasons, the court holds that the plaintiffs are required to exhaust their administrative remedies for all of their claims.

Id. (granting motion to dismiss for failure to exhaust CMPA's administrative remedies).

relief need not be co-extensive with other judicial remedies; it need only be adequate to 'right the wrong.'") (quoting *Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 107 (D.C. Cir. 1986)).

Because plaintiffs have failed to exhaust their administrative remedies under the CMPA, their claims should be dismissed.

C. Plaintiffs' Claims Arising Under The District Of Columbia Whistleblower Protection Act, Counts XIII and XIV, Must Be Dismissed.

While the Circuit vacated this Court's decision dismissing the D.C. law claims, plaintiffs are nonetheless precluded from proceeding on their D.C. Whistleblower Act claims, because of issues decided against plaintiffs earlier. The law-of-the-case doctrine applies not only to issues explicitly decided by an earlier ruling, but those decided "by necessary implication." *Sherley*, 689 F.3d at 782 (quoting *Crocker*, 49 F.3d at 739). *See also PNC Fin. Servs. Group, Inc. v. Comm'r*, 503 F.3d 119, 126 (D.C. Cir. 2007) (same).

Consequently, because plaintiffs' current DCWPA claims are identical to their previous claims (*cf.* FSC ¶¶ 33–48 and SAC ¶¶ 147–162), they fail, as they rely on conclusory allegations that the District took prohibited action in "retaliation" for "protected disclosures."

But this Court (and the Circuit) has already decided that Cannon could *not* have been terminated *because of* any protected activity, as the disciplinary action resulting in his termination occurred *months* before the lawsuit was filed. *Cannon*, 717 F.3d at 208, *affirming* 873 F.Supp.2d at 285.

As to plaintiffs' DCWPA claim alleging that the District "retaliated" against the other plaintiffs by applying the offset, that, too, fails on the basis of causation. *Cf.* FSC ¶¶ 50–53 and SAC ¶¶ 164–167. The only "protected disclosure" that plaintiffs allege that they made here is the

filing of the lawsuit. But the original lawsuit was filed on January 26, 2012, SAC ¶ 51, whereas the offsets had begun to be applied—by plaintiffs' own admission—*before* then, *i.e.*, in "each of their respective first pay periods of 2012 . . . ." *Id*., ¶ 50. Moreover, plaintiffs learned of the planned offset *months* before then, in October of 2011. *Cannon*, 717 F.3d at 203. Hence, the "protected disclosure" of the lawsuit was *caused by* the offset, and not vice versa. Plaintiffs' DCWPA claims must be dismissed. *See Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1116 (D.C. Cir. 2000) ("[I]t is possible for a plaintiff to plead too much: that is, to plead himself out of court by alleging facts that render success on the merits impossible.").

To the extent plaintiffs' DCWPA claims survive application of the law-of-the-case doctrine, they are deficient and must be dismissed. To establish a *prima facie* case under that Act, "an aggrieved employee must show by a preponderance of the evidence: (1) a protected disclosure, as defined in [D.C. Code] § 1–615.52(6); (2) a prohibited personnel action, as defined in [D.C. Code] § 1–615.52(5); and (3) that the protected disclosure was a 'contributing factor' or *causally connected* to the prohibited personnel action, as defined in [D.C. Code] § 1–615.52(2)." *Hawkins v. Boone*, 786 F. Supp. 2d 328, 333 (D.D.C. 2011) (citing D.C. OFFICIAL CODE § 1–615.54(b)).

Even assuming their filing of this lawsuit could properly be characterized as a "protected disclosure," plaintiffs have not alleged a "direct causal link" between their alleged disclosure and the adverse action, because this lawsuit happened *after* the adverse action (the pension offset). *See Crawford v. District of Columbia*, 891 A.2d 216, 222 (D.C. 2006) ("while an employee makes a *prima facie* case by showing that the 'protected disclosure' was a 'contributing factor' to the disciplinary action, a jury must find a *direct causal link* in order for there to be liability under § 1–615.53) (emphasis added). As the District of Columbia Court of Appeals has held,

"liability under the Whistleblower Protection Act is measured under a 'but for' analysis." *Johnson v. District of Columbia*, 935 A.2d 1113, 1119 (D.C. 2007) (citing *Crawford*, 891 A.2d at 222). As noted *supra*, the Circuit determined that plaintiffs learned of the planned offset months before it occurred, and only made their "protected disclosure" (the lawsuit) *after* the offsets had been applied. *See Cannon*, 717 F.3d at 203.

For the reasons set forth above, the Court should dismiss Counts XIII and XIV.

D. Plaintiff Cannon's Defamation Claim, Count XII, Must Be Dismissed.

Plaintiff Cannon's utterly conclusory defamation claim, identical to that previously submitted, *cf.* FSC ¶¶ 26–31 and SAC ¶¶ 140–145, is similarly deficient and must be dismissed.

As argued elsewhere herein, common-law defamation claims are preempted by the CMPA. *See supra*. Notwithstanding this, to state a claim of defamation in the District of Columbia, a plaintiff must allege:

> "(1) that the defendant made a false or defamatory statement concerning the plaintiff; (2) that the defendant published the statement without privilege to a third party; (3) that the defendant's fault in publishing the statement amounted to at least negligence; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm."

Saint-Jean, 846 F.Supp.2d at 266 (quoting *Williams v. District of Columbia*, 9 A.3d 484, 491 (D.C. 2010)).

Plaintiff Cannon has not stated a claim for defamation, because the SAC fails to allege any *details* of any "statement," only asserting that the District had "report[ed] the termination to the press and incorporat[ed] the termination into Plaintiff Cannon's personnel jacket[.]" SAC ¶ 142. But the fact that plaintiff Cannon's employment was terminated by the District is obviously truthful and undisputed. That unadorned statement is simply not "reasonably susceptible to a

defamatory meaning," hence plaintiffs have failed to state a defamation claim. *Saint-Jean*, 846 F.Supp.2d at 266–67 (citing *Ihebereme v. Capital One, N.A.*, 730 F.Supp.2d 40, 56 (D.D.C. 2010) (quoting *Clawson v. St. Louis Post-Dispatch, LLC*, 906 A.2d 308, 313 (D.C. 2006)).

Plaintiffs utterly fail to state a defamation claim, merely asserting that the "stated cause" for the termination was "entirely pretextual . . . patently frivolous [and] insufficient[.]" SAC ¶ 60. This is plainly not enough, no matter how upset Mr. Cannon was. *See Saint-Jean*, 846 F.Supp.2d at 267 ("'[A]n allegedly defamatory remark must be more than unpleasant or offensive; the language must make the plaintiff appear odious, infamous, or ridiculous.'") (quoting *Armenian Assembly of Am. v. Cafesjian*, 597 F.Supp.2d 128, 140–41 (D.D.C. 2009) (in turn quoting *Johnson v. Johnson Publ'g Co.*, 271 A.2d 696, 697 (D.C. 1970))).

The plaintiffs fail to allege that the *reasons* for the termination were published, to the press or anyone else; plaintiffs' deficient statements are no more than "'naked assertions' devoid of 'further factual enhancement'" and hence fail to state a defamation claim. *Bell Atlantic*, 550 U.S. at 555 (quoting *Twombly*, 550 U.S. at 557). *See also Audrick Payne v. Clark*, 25 A.3d 918, 930 (D.C. 2011) (defamation claim subject to dismissal where plaintiff's "conclusory allegations or bare assertions . . . rest solely on [his] allegations that [defendant's] assertions are false.").

Moreover, the District's "publication of the termination letter to plaintiff's file was protected by a qualified privilege because the law has long recognized a privilege for anything said or written by a master in giving the character of a servant who has been in his or her employment." *Miller v. Health Servs. for Children Foundation*, 630 F. Supp. 2d 44, 51 (D.D.C. 2009) (internal quotation marks omitted) (quoting *Turner v. Federal Express Corp.*, 539 F. Supp. 2d 404, 409 (D.D.C. 2008)). *See also Audrick Payne*, 25 A.3d at 926 (privilege protects "a statement made by an employer regarding the conduct of an employee"); *Mosrie v. Trussell*, 467

A.2d 475, 477 (D.C. 1983) ("communications concerning alleged misconduct of a police officer to his superior are entitled to a qualified privilege.") (citing *Sowder v. Nolan*, 125 A.2d 52 (D.C. 1956)).

This privilege is a complete defense to defamation. Even where the alleged statements are *false*, a plaintiff seeking to overcome the privilege can only do so by demonstrating that the statement was published with malice. *Turner*, 539 F. Supp. 2d at 409 (citing *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 879 (D.C. 1998)); *Mosrie*, 467 A.2d at 477.[9] Malice in this context is "reckless or callous disregard for [the statement's] effect upon the reputation of the plaintiff." *Moss*, 580 A.2d at 1025. The SAC does not allege that the District generated its internal memoranda to impair plaintiff Cannon's reputation; indeed, documentation concerning the basis for plaintiff Cannon's termination was not designed to be disseminated outside the District. *See* D.C. Code § 1-631.03. Plaintiff Cannon's failure to plead the existence of malicious intent is fatal to his claim. *See Turner*, 539 F. Supp. 2d at 409–10 (dismissing complaint pursuant to Fed. R. Civ. P. 12(b)(6) where the plaintiff failed to adequately plead malice to overcome qualified privilege).

For the reasons set forth above, the Court should dismiss plaintiff Cannon's defamation claim, Count XII.

E. Plaintiffs' Claim That The Offset Amounts To A Tax, Count IV, Cannot Succeed.

In Count IV of the SAC, plaintiffs offer the conclusory statement that the pension offset is a "direct tax upon non-residents of the District of Columbia." SAC ¶ 95.

[9] "[T]he burden is on the plaintiff to prove the privilege has been abused." *Audrick Payne*, 25 A.3d at 925 (quoting *Blodgett v. University Club*, 930 A.2d 210, 224 (D.C. 2007)).

First, plaintiffs provide nothing more than conclusory statements and legal conclusions in support of this claim, which is patently insufficient under *Iqbal* and *Twombly*. *Iqbal*, 129 S. Ct. at 1949, *Twombly*, 550 U.S. at 555. *Second*, the statutory offset is not a "tax" merely because plaintiffs would like to characterize it as such. A tax is "[a] charge by the government on the income of an individual, corporation, or trust, as well as on the value of an estate or gift or property." *Black's Law Dictionary* 1015 (6th ed. 1991). The offset about which plaintiffs complain simply is not a government "charge" upon the value of anything. *Third*, even if by some stretch of the imagination the offset could be considered a "tax," as described in the previous round of briefing, it is applicable to *every* current D.C. employee who also receives an annuity from the PFR Fund, regardless of where these individuals reside. *See, e.g.*, *Bishop v. District of Columbia*, 401 A.2d 955, 957–58 (D.C. 1979) ("A commuter tax, loosely defined, is a levy by a jurisdiction upon individuals who do not live in that jurisdiction . . . ."). That all of the individuals who chose to join this action as plaintiffs reside outside the District of Columbia does not establish that this offset is applicable only to non-residents of the District of Columbia.

This claim is, at best, nonsensical, and thus Count IV should be dismissed.

F. Plaintiffs Fail To State Any Common-Law Claims.

a. Breach of Contract (Count VI)

As shown previously, plaintiffs Cannon, Watkins, Gainey, and Neill are "at will" employees "and so do not have employment contracts." *Carter v. District of Columbia*, 980 A.2d 1217, 1224 (D.C. 2009) (affirming grant of summary judgment to District on terminated supervisor's breach of contract claim). *See* Doc. No. 18 at 2, 21, 40. Thus, plaintiffs' breach of

contract claims as to plaintiffs Cannon, Watkins, Gainey, and Neill in Count VI must be dismissed.

To the extent plaintiffs Ford-Haynes and Weeks did or do have "contracts" with the District, they were or are Career Service employees covered by the CMPA, *see supra*, and so are required to exhaust their administrative remedies.[10] As discussed above, an employee contesting an adverse personnel action "must exhaust the remedies prescribed either by the [CMPA]" or their CBA. *Johnson*, 552 F.2d at 810. Because plaintiffs Ford-Haynes and Weeks have failed to exhaust their administrative remedies, their claims under Count VI should also be dismissed.

b. Detrimental Reliance/Promissory Estoppel (Count VIII)

Plaintiffs' unchanged, conclusory detrimental reliance/promissory estoppel claim may be dismissed out of hand. *Cf.* FAC ¶¶ 95–99 and SAC ¶¶ 118–122.

As this Court well knows, "[e]stoppel against the government, while theoretically permissible, is rarely justified." *Genesis Health Ventures, Inc. v. Sebelius*, 798 F.Supp.2d 170, 183 (D.D.C. 2011) (quoting *Hecker v. Community Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 59 (1984)). At a minimum, to estop the government, a party must show (1) a "definite representation" by the government, (2) the party relied on the government's conduct to change its position for the worse, (3) the party's reliance was "reasonable," and (4) the government engaged in "affirmative misconduct." *Id*. (citing *Keating v. FERC*, 569 F.3d 427, 434 (D.C. Cir. 2009)). *See also Kauffman v. Int'l Brotherhood of Teamsters*, 950 A.2d 44, 49 n.7 (D.C. 2008)

[10] Notwithstanding the CMPA, all claims relating to District contracts must be submitted to the D.C. Contract Appeals Board ("CAB"). D.C. Official Code § 2-309.03 provides, in pertinent part, that the CAB shall be the *exclusive hearing tribunal* for, and shall have jurisdiction to review and determine a claim by a contractor, when such claim arises under or relates to a contract with the District. *See also* D.C. Official Code § 2-308.05 (claims by a contractor against the District government).

("there must be evidence of a promise, the promise must reasonably induce reliance upon it, and the promise must be relied upon to the detriment of the promissee.") (quoting *Simard v. Resolution Trust Co.*, 639 A.2d 540, 552 (D.C. 1994)). "[T]he theory may be invoked only when 'injustice otherwise [would] not [be] avoidable.'" *Id*. (alterations in original) (quoting *Bender v. Design Store Corp.*, 404 A.2d 194, 196 (D.C. 1979)).

Plaintiffs cannot fulfill each element of this test. Not only do plaintiffs fail entirely to allege any sort of "definite representation" by the District that the plaintiffs could "double dip" indefinitely or that the District would never apply the offset to them, they have not alleged (nor can they prove) any sort of affirmative government misconduct. That the District was, ultimately, incorrect about the application of the offset and its implications for the FLSA is irrelevant to this analysis. Even if the District had *entirely failed* to even mention the pension-offset issue to plaintiffs, that fact would not rise to the level of "affirmative misconduct." *See Bowman v. District of Columbia*, 496 F.Supp.2d 160, 164 (D.D.C. 2007) (citing *Gibson v. West*, 201 F.3d 990, 994 (7th Cir. 2000) (a "failure to advise," even when the government has an "affirmative obligation" to do so, "is not the same as engaging in 'affirmative misconduct.'")). Thus, Count VIII should be dismissed.

c. Unjust Enrichment (Count VII)

Plaintiffs' unjust enrichment claims fair no better. As plaintiffs correctly imply, a claim of unjust enrichment cannot be asserted if there is an express contract between the parties. *Cf.* SAC ¶ 115; *Plesha v. Ferguson*, 725 F.Supp.2d 106, 112 (D.D.C. 2010) (citing *Vila v. Inter-Am. Inv. Corp.*, 570 F.3d 274, 279 (D.C. Cir. 2009)); *Harrington v. Trotman*, 983 A.2d 342, 346 (D.C. 2009). Notwithstanding this, for plaintiffs to succeed on an unjust enrichment claim, they

must allege and prove that they conferred a benefit on the District which the District retained, under circumstances which render the District's retention of such benefit "unjust." *Id*. (citing *News World Communications, Inc. v. Thompsen*, 878 A.2d 1218, 1222 (D.C. 2005)).

Plaintiffs cannot clear this hurdle, as they were on notice of this statutory offset at the time they were re-employed with the District. Moreover, for all the reasons discussed herein, it is patently unreasonable for plaintiffs to assume the offset would never be applied to them, and eminently reasonable for the District to prevent such "double dipping" to protect the public fisc. Consequently, Count VII should be dismissed.

d. Intentional/Negligent Misrepresentation (Count IX)

Similarly, plaintiffs fail to state a claim of intentional misrepresentation. To state such a claim, plaintiffs must allege "(1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action taken . . . in reliance upon the representation, (6) which consequently resulted in provable damages." *Kumar v. DCWASA*, 25 A.3d 9, 15 n.9 (D.C. 2011) (quoting *Railan v. Katyal*, 766 A.2d 998, 1009 (D.C. 2001) (citations omitted)). Plaintiffs have utterly failed to allege the requisite intent or knowledge. *Cf. White*, 852 A.2d at 925 (federal retiree's *sole* recourse for alleged "fraudulent misrepresentation" regarding the offset of his federal pension from his District salary was "to seek administrative relief pursuant to the CMPA.").[11]

Similarly, to state a claim for negligent misrepresentation, plaintiffs must allege "(1) that [the defendant] made a false statement or omitted a fact that he had a duty to disclose; (2) that it involved a material issue; and (3) that [the plaintiff] reasonably relied upon the false statement or

[11] Aside from the FLSA issues, *White* provides clear guidance for resolution of plaintiffs' District-law claims in the instant matter.

omission to his detriment . . . .” *Id*. (quoting *Redmond v. State Farm Ins. Co*., 728 A.2d 1202, 1207 (D.C. 1999). Plaintiffs fail to clear the first hurdle, as they allege no sort of “duty” on the part of the District here.

Moreover, regardless of plaintiffs’ ability or inability to meet these elements of their claim, plaintiffs have failed to plead misrepresentation with the “particularity” required. *Simms v. District of Columbia*, 699 F.Supp.2d 217, 226–27 (D.D.C. 2010) (“The circumstances that the claimant must plead with particularity include matters such as the time, place, and content of the false misrepresentations, the misrepresented fact, and what the opponent retained or the claimant lost as a consequence of the alleged fraud.”) (quoting *United States ex rel. Totten v. Bombardier Corp*., 286 F.3d 542, 551–52 (D.C. Cir. 2002)).

Plaintiffs have not come close to meeting this threshold, failing to allege when or where such a “misrepresentation” occurred. Such a lack of detail dooms the claim. *Id*. at 227 (“dismissing claim of negligent misrepresentation where plaintiff presents no facts other than general statements as to the who, what, where, and when of the statements allegedly made by [defendant].”). Count IX should therefore be dismissed.

e. Constructive Termination

Notwithstanding plaintiffs’ conclusory allegations, *see* SAC 170–175, the common-law tort of constructive termination is, like the others invoked here, precluded by the CMPA. *See Burton v. District of Columbia*, 835 A.2d 1076, 1078 (D.C. 2003) (affirming grant of judgment to the District, for failure to exhaust under the CMPA, for tort claims of constructive discharge,

intentional and negligent infliction of emotional distress, and tortious interference with contractual relations).[12] Consequently, Count XV should be dismissed.

CONCLUSION

For all of the foregoing reasons, aside from plaintiffs' claims under the FLSA, plaintiffs' Second Amended Complaint must be dismissed.

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Respectfully submitted,

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[12] *Cf. Watson v. DCWASA*, 923 A.2d 903, 907 (D.C. 2007) ("[O]nce an employee voluntarily resigns from her job, the employer's decision not to accept a subsequent withdrawal of that resignation does not transform the employee's act into an involuntary one.") (quoting *Wright v. District of Columbia Dep't of Employment Servs.*, 560 A.2d 509, 513 (D.C. 1989)).